Textile Processors, Service Trades, Healthcare, Professional & Technical Employees, Local 311 (Mission Industries, d/b/a Mission Uniform & Linen Services) *and* Suzanne J. Pollack. Cases 28–CB–3832 and 28–CB–3855

December 15, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX, LIEBMAN, AND HURTGEN

On April 26, 1996, Administrative Law Judge Burton Litvack issued the attached decision. The Respondent Union filed exceptions and a supporting brief.[1]

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[2] and conclusions only to the extent consistent with this Decision and Order.

This case presents the issue of whether the Respondent violated Section 8(b)(1)(A) of the Act by failing and refusing to accept Charging Party Suzanne Pollack's tender of membership dues, thereby removing Pollack from union membership status and causing her to be ineligible to run for union office. The judge concluded that the Respondent's conduct violated the Act based in part on his finding that the Respondent refused Pollack's dues tender because of her internal union activities. For the reasons set forth in *Sandia National Laboratories*[3] and briefly reiterated below, we find merit in the Respondent's exceptions to the judge's finding.

Facts

The Respondent Union has approximately 700 members and represents employees who are engaged in the clothing, uniform, and linen cleaning and laundry business in Las Vegas, Nevada. Charging Party Pollack, who became a member of the Respondent Union in 1986, has been a long-time dissident concerning the Respondent's internal operations. In April 1988, Pollack was terminated from her job with Tiffany Cleaners, a union signatory employer. After Pollack filed unfair labor practice charges against both Tiffany Cleaners and the Respondent, both entities entered into an informal settlement agreement in November 1988.[4] In June 1988, Pollack took a job with Sierra Cleaners, a nonunion employer, and continued to work there until June 1989. During her employment with Sierra Cleaners, Pollack tendered dues to the Respondent every month, and the Respondent accepted those dues.

Also during 1988, Pollack wrote letters, dated May 25 and July 13, to the Respondent's International President, Frank Scalish, in which she complained that Robert Camacho, the Local's president, was failing to perform his job duties and was "using his office for personal gain." The letters also protested the manner in which the Respondent was conducting its executive board meetings.

Pollack then ran for president of the Respondent against Camacho. The election was held on September 12, 1988, and Pollack lost, receiving only 25 percent of the vote.[5] Thereafter, Pollack wrote to the Respondent's secretary/treasurer, Mary Caldwell, protesting the election and listing six supporting reasons. After Caldwell responded that Pollack's accusations were totally unfounded, Pollack wrote to the Department of Labor (DOL) in January 1989, challenging the Respondent's election procedure and its conduct of the November 1988 election. On April 4, 1989, the DOL concluded that the matter raised by Pollack did not warrant legal action. On June 5, 1989, Pollack wrote another letter to Caldwell, this time protesting salary increases that Camacho and Caldwell had given themselves and proposing an amendment to the Respondent's bylaws regarding the method of setting salaries for Local officials. The Respondent's executive board denied Pollack's proposed amendment.

In June 1989, Caldwell referred Pollack to a job with Mission Linen with whom the Respondent has a collective-bargaining agreement. Also, in July 1990, Camacho appointed Pollack to serve as shop steward at Mission Linen. Then, in March 1991, Camacho resigned when Scalish, president of the International, placed the Respondent into trusteeship because the Local was almost bankrupt. Scalish appointed Anthony Griese as the Respondent's special trustee and chief operating officer. On assuming office, Griese rescinded the Respondent's constitution and bylaws and established the International's constitution and bylaws as the Respondent's governing documents. Griese also eliminated the Re-

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, and brief adequately present the issues and the positions of the parties.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] *Office Employees Local 251 (Sandia Laboratories)*, 331 NLRB No. 193 (2000).

[4] While Pollack was between jobs in 1988, the Respondent offered her a withdrawal card, but she declined to accept it.

[5] During the campaign, Camacho wrote to Scalish and questioned Pollack's eligibility to run against him while she was working for a nonsignatory employer.

spondent's hiring hall procedures, ceased the Respondent's practice of accepting members' dues payments at the Respondent's office, and implemented a practice of immediately offering a withdrawal to any member who lost his or her job with a signatory employer. In August 1991, Griese appointed Pollack to serve on the Respondent's negotiating committee for contract negotiations with Mission Linen.

During the summer of 1992, Pollack received two warning notices from Mission Linen and filed grievances and unfair labor practice charges against her employer. The Region deferred the charges to the contractual grievance and arbitration procedure. The Respondent then processed both grievances through arbitration, which resulted in an adverse decision.

Pollack was off work due to a back injury in the fall of 1992. She paid her monthly dues directly to the Respondent and, contrary to Griese's stated policy, the Respondent accepted her dues payments. Pollack at that time also complained to Scalish, whose office is in Cleveland, Ohio, about Griese's purchase of an automobile and the money he had spent in remodeling the union hall. During a union meeting on October 7, 1992, Pollack showed three other members the LM-2 form that the Respondent had filed with the DOL the previous year and, with Griese standing no more than 3 feet away, voiced her concerns about the Respondent's financial status. The next day, October 8, Pollack wrote to the DOL and requested an investigation of the Respondent's trusteeship, in particular the activities of trustee Griese. The DOL began an investigation of her complaints. On October 15, Pollack wrote a letter to Griese, requesting the opportunity to examine all of the Respondent's financial records relating to office remodeling and the purchase of an automobile. The Respondent made these records available for Pollack's inspection at its attorney's office on November 24, 1992.

On approximately December 7, 1992, prior to a general membership meeting, Scalish told Pollack that the Respondent's trusteeship would end in 1993, and a DOL representative informed Pollack that an election for president would be held at that time. At the same meeting, Pollack spoke to Luz Hall, the Respondent's receptionist and interpreter, and asked if Hall would be interested in running for office on the same slate as Pollack in 1993. Hall declined Pollack's offer.

In December 1993, Pollack was removed as shop steward for the Mission Linen bargaining unit, because the employees there needed a Spanish-speaking steward and Pollack did not speak Spanish. Approximately 1 week later, on December 31, Mission Linen discharged Pollack. On January 4, 1994, Pollack filed unfair labor practice charges against both Mission Linen and the Respondent. Pollack later withdrew these charges and then refiled them on April 4, 1994.[6]

On February 1, 1993, the day before she withdrew her initial unfair labor practice charges, Pollack telephoned Mary Caldwell at the Respondent's office and asked her to inform Griese about her withdrawals of the unfair labor practice charges. Later that afternoon, Pollack went to the Respondent's office and "tried" to pay her February membership dues. Caldwell refused to accept Pollack's dues tender because Pollack was not working for a union signatory employer. Caldwell did *not* offer Pollack a withdrawal card. That same night, Pollack went to a union meeting and attempted to pay her dues directly to Griese, who said that he could not accept her dues payment unless she was working in a "signatory establishment." Pollack then mailed her dues check to the Respondent's office, but the Respondent's attorney returned the check.

The Judge's Decision

The judge found, as relevant here, that the Respondent violated Section 8(b)(1)(A) of the Act by refusing to accept Pollack's dues tender in February of 1993, after she no longer worked for a signatory employer. The judge concluded that the Respondent's rationale for rejecting Pollack's dues tender was a sham in retaliation for her internal union activities. The judge concluded that, even assuming that there was a valid rule that could have justified the Respondent's action, the Respondent nonetheless violated Section 8(b)(1)(A) of the Act under *Teamsters Local 579 (Janesville Auto Transport)*,[7] which held that internal union discipline in retaliation for a member's dissident activities violates Section 8(b)(1)(A).

DISCUSSION

> In *Sandia National Laboratories*,[8] the Board concluded that Section 8(b)(1)(A) does not proscribe . . . wholly intraunion conduct and discipline . . . . Instead . . . Section 8(b)(1)(A)'s proper scope, in union discipline cases, is to proscribe union conduct against union members that impacts on the employment relationship, impairs access to the Board's processes, pertains to unacceptable methods of union coercion, such as physical violence in organizational

[6] During the hearing in this case, Mission Linen entered into an informal settlement, approved by the judge, that fully remedied Pollack's charge against it. No exceptions were filed to the judge's finding that the Respondent did not violate Sec. 8(b)(1)(A) and (2) by causing Mission Linen to discharge Pollack.

[7] 310 NLRB 975 (1993), enf. denied 145 LRRM 1054 (7th Cir. 1993).

[8] 331 NLRB No. 193, slip op. at 3. See also: *Local 254 Service Employees (Brandeis University)*, 332 NLRB No. 103 (2000).

or strike contexts, or otherwise impairs policies imbedded in the Act.

Because *Sandia* concerned a purely intraunion quarrel between factional rivals concerning the propriety of intraunion activity, the Board concluded that the case did not fall within any of these categories of union conduct that may constitute violations of the Act. The Board thus found no merit to the complaint in *Sandia*. In so concluding, the Board stressed that there is a forum for resolving such internal disputes under the Labor-Management Reporting and Disclosure Act, enacted by Congress in 1959.[9] The Board also overruled prior decisions in *Carpenters Local 22 (Graziano Constr. Co.)*,[10] *Teamsters Local 579 (Janesville Auto Transport)*,[11] *Laborers Local 324 (AGC of California)*,[12] and *Laborers, Local 652 (Southern California Contractors' Assn.),*[13] as inconsistent with *Sandia*, because the unions' discipline in those cases similarly had no meaningful relationship to the employment context.

Applying *Sandia* to the present case, we find that the Respondent's refusal to accept Pollack's dues tender falls outside all the categories of conduct that appropriately may invoke the proscriptions of Section 8(b)(1)(A). Here, there is no evidence of any unacceptable methods of union coercion. Also, there is no contention that the Respondent in any way restricted Pollack's access to Board processes. Finally, Respondent's action had no clear nexus to the employment relationship under *Sandia*; nor did it "impair policies imbedded in the Act."[14] Thus, Pollack's inability to make dues payments during periods in which she has not worked for a signatory employer does not affect her future employment opportunities, or otherwise adversely affect her conditions of employment. Pollack has lost her membership privileges and cannot run for union office, but these are strictly internal union matters.

The judge found that there was no legitimate rule under which the Respondent refused to accept Pollack's dues payments. However, we find it unnecessary to decide whether the Respondent acted pursuant to a duly adopted rule because the Act does not contain any proscription against Respondent's refusal to accept dues on account of Pollack's purely internal activity. It is also immaterial that, even assuming there was such a rule, the Respondent may have discriminatorily enforced it against Pollack in order to retaliate against her for engaging in internal union activities. The judge's reliance on *Janesville Auto Transport* in reaching a contrary result is no longer correct in light of our *Sandia* decision overruling that and similar cases. Simply put, we will not scrutinize a union's internal discipline of its members, even for allegedly discriminatory reasons, so long as the action does not restrict access to the Board's processes or invoke any aspect of the employment relationship. There may be another forum in which Pollack can raise her complaints about the Respondent's conduct, but Section 8(b)(1)(A) of the Act does not provide it. Accordingly, we shall dismiss the instant complaint.[15]

ORDER

The complaint is dismissed.

MEMBER HURTGEN, concurring.

For the reasons set forth in *Sandia National Laboratories*, 331 NLRB No. 193 (2000), I agree with the majority that the instant Section 8(b)(1)(A) complaint should be dismissed. Thus, the Respondent's refusal to accept the dues tendered by employee Pollack arose out of an entirely intraunion dispute, and it did not affect Pollack's employment status.

I recognize that a violation could be based on the *Scofield* tests. That is, the Respondent's conduct may be contrary to LMRDA principles and it may not have been pursuant to a union rule.[1] However, for the reasons of comity, efficiency, and economy, I would stay the Board's hand in favor of LMRDA resolution of the dispute.[2]

Jerry Schmidt, Esq. and *Scott Brian Feldman, Esq.,* for the General Counsel.

Dennis A. Kist, Esq. and *Mona L. Snape, Esq. (Dennis A. Kist & Associates),* Las Vegas, Nevada, for the Respondent.

DECISION

STATEMENT OF THE CASE

BURTON LITVAK, Administrative Law Judge. The original and first amended unfair labor practice charges in Case 28–CB–3832 were filed by Suzanne J. Pollack, an individual, on January 4, 1993, and April 4, 1994, respectively, and based on the unfair labor practice charges, on June 17, 1994, the Regional Director of Region 28 of the National Labor Relations

[9] Id. slip op at 10.

[10] 195 NLRB 1 (1972).

[11] Supra at fn. 7.

[12] 318 NLRB 589 (1995), enf. granted in part and denied in part 123 F.3d 1176 (9th Cir. 1997).

[13] 319 NLRB 694 (1995).

[14] *Sandia*, 331 NLRB No. 193, slip op. at 3.

[15] In finding no violation of the Act, we place no reliance on the decision, which the Respondent attached to its brief on exceptions, by the United States District Court of Nevada in *Robert B. Reich, Secretary of Labor, Plaintiff v. Local 311 Textile Processors Service Trade*, Case CV-S-94-328-DWH (LRL), particularly since the operative events there occurred subsequent to the time that the Respondent's allegedly unlawful conduct began.

[1] *Scofield v. NLRB,* 394 U.S. 423 (1969).

[2] As a matter of fairness, I would entertain a motion for reconsideration based on an assertion that the conduct here was not cognizable under the LMRDA.

Board, herein called the Board, issued a complaint,[1] alleging that Textile Processors, Service Trades, Healthcare, Professional & Technical Employees Union, Local 311, Respondent, had engaged in, and was engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) of the National Labor Relations Act (the Act) and Section 8(b)(2) of the Act. The original and first amended unfair labor practice charges in Case 28–CB–3855 were filed by Pollack on February 9 and June 17, 1993, and, on June 22, 1993, the Regional Director of Region 28 issued a complaint, alleging that Respondent had engaged in, and was engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act. Respondent timely filed an answer to each complaint, essentially denying the commission of any of the alleged unfair labor practices and raising certain affirmative defenses. The matters were consolidated for trial, and, on July 10–13 and September 19, 1995, in Las Vegas, Nevada, the matters were tried before me. At the trial, all parties were afforded the opportunity to examine and cross-examine all witnesses, to offer into the record any relevant evidence, to argue their legal positions orally,[2] and to file posthearing briefs. The documents were filed by counsel for the General Counsel and by counsel for Respondent and have been carefully considered. Accordingly, based on the entire record, including briefs and my analysis of the testimonial demeanor of the witnesses, I make the following

FINDINGS OF FACT[3]

I. THE ISSUES

The complaint in Case 28–CB–3832 alleges that Respondent violated Section 8(b)(2) of the Act and Section 8(b)(1)(A) of the Act by, on or about December 30, 1992, requesting that Mission Linen discharge its employee Pollack in retaliation for Pollack's having engaged, and expressed intent to engage in, internal union activity perceived as inimical to the interests of the then current administration of Respondent. The complaint in Case 28–CA–3855 alleges that Respondent violated Section 8(b)(1)(A) of the Act on or about February 1, 1993, by refusing to accept Pollack's tender of dues and by removing her from membership in good standing in order to cause her to be ineligible to hold office in Respondent. Respondent denied engaging in the alleged unfair labor practices. Further, in the former case, Respondent contends that the entire matter is time-barred pursuant to Section 10(b) of the Act, and, in the latter matter, Respondent contends that the matter is governed by the proviso to Section 8(b)(1)(A) and specifically that it was merely enforcing a membership rule in refusing to accept Pollack's tender of dues. In response, counsel for the General Counsel argues that the Act's statute of limitations was tolled in Case 28–CB–3832 inasmuch as Respondent engaged in fraudulent concealment of

[1] The document is actually a consolidated complaint, consolidating Case 28–CB–3832 for trial with an unfair labor practice charge against Mission Industries, d/b/a Mission Uniform & Linen, Mission Linen, in Case 28–CA–11801. However, during the trial, the parties, in the latter matter, entered into an informal settlement agreement, which fully remedied the alleged unfair labor practices and which the undersigned approved, and the maker was severed from the instant matters and remanded to the Regional Director of Region 28 for purposes of compliance.

[2] Prior to the start of the hearing and renewed at the hearing, Respondent moved that the complaint in Case 28–CB–3832 be dismissed on grounds that the General Counsel had pled an improper standard for the tolling of the Sec. 10(b) of the Act statute of limitations period and that, therefore, the General Counsel lacked subject matter jurisdiction in that case. Notwithstanding my denial of his motion to amend the said complaint to plead the proper standard for toiling the Act's 6-month statute of limitations time period, a ruling which I affirm, counsel for the General Counsel argued that it was never the General Counsel's burden of proof to plead any standard for the tolling of the statute of limitations time period and that, therefore, pleading an improper standard was an inconsequential act and one not requiring dismissal of the complaint. I took Respondent's motion to dismiss under advisement, with the understanding that I would rule on it in my decision, and, having considered the legal arguments of the parties during the hearing and in their posthearing briefs, notwithstanding whatever skepticism I expressed at the trial, I now believe counsel for the General Counsel's legal position is a correct statement of the law and have decided to deny Respondent's motion.

In this regard, at the outset, rather than "newly discovered, previously unavailable evidence" the proper standard for reinstating previously withdrawn charges and, thereby, equitably tolling the Act's statute of limitations time period is "fraudulent concealment" of material facts by a respondent. *Weiner Motors, Inc*., 265 NLRB 1457 (1982). However, contrary to the assertion of counsel for Respondent that no case law exists on the subject, the Board has long held that Sec. 10(b) of the Act "is a statute of limitations and is not jurisdictional in nature." *Lockheed Shipbuilding Co.*, 278 NLRB 18, 23 (1986); *Federal Management Co.,* 264 NLRB 107 (1982). That this is so is clear, as pleading the Sec. 10(b) of the Act statute of limitations period is an affirmative defense, which is deemed waived by a respondent if not timely raised. *Zipes v. Trans World Airlines*, 455 U.S. 385, 395 fn. 11 (1982); *DTR Industries*, 311 NLRB 833 fn. 1 (1993); *Redd-I, Inc.*, 290 NLRB 1115, 1119 (1988) (Chairman Stephens, dissenting in part); *Federal Management Co*., supra. Accordingly, I agree with counsel for the General Counsel that it simply was never the General Counsel's burden of proof to plead anything regarding the toning of the Act's 6-month statute of limitations. Moreover, while, in deciding to announce, in advance, its rationale for arguing that the statute of limitations had been tolled in the case, the General Counsel obviously was inexcusably negligent in failing to plead the proper standard for such, counsel for Respondent did, in fact, have notice that the General Counsel would argue fraudulent concealment here and, therefore, it is difficult to perceive how Respondent was prejudiced by the General Counsel's erroneous pleading. Thus, not only did a field examiner of the Board notify counsel for Respondent, by letter dated January 24, 1994, that the Board was investigating whether or not fraudulent concealment had occurred but also, in responses to counsel for Respondent's motions for a bill of particulars and to dismiss, counsel for the General Counsel correctly argued that the standard for equitably tolling the Act's statute of limitations was fraudulent concealment and that such would be the General Counsel's argument here. Finally, despite the erroneous complaint pleading, the purposes and policies of the Act are best served by not having the Board place the "consequences" of its own negligence upon potentially "wronged" employees to the benefit of potentially "wrongdoing employers." *NLRB v. J. H. Rutter-Rex Mfg. Co*., 396 U.S. 258, 264–265 (1969).

[3] In its answers, Respondent admitted the jurisdictional paragraphs of both complaints, in particular that Mission Linen is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. Respondent also admitted, in its answers to both complaints, that it is a labor organization within the meaning of Sec. 2(5) of the Act.

material facts and that the proviso to Section 8(b)(1)(A) of the Act does not apply in Case 28–CB–3855 inasmuch as the issue is whether Respondent was motivated by the Charging Party's opposition to its leaders and not the validity of its membership rules.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

Respondent, which, at all times material, has had approximately 700 members and whose International president is Frank Scalish, represents employees of, and engages in collective bargaining with, employers, who are engaged in the clothing, uniform, and linen cleaning and laundry business in Las Vegas, Nevada. The Charging Party Pollack has been a member of Respondent since 1986, and there is no dispute that she has been a long-time dissident, regarding Respondent's internal operations. Thus, in 1988, Pollack, who was terminated from her job with Tiffany Cleaners, a union-signatory employer, in April of that year[4] and who, as a result of unfair labor practice charges filed against Respondent and Tiffany Cleaners and subsequent informal settlement agreements with both entities, received $4,184.80 in backpay from Respondent in November, wrote letters, dated May 25 and July 13, to Scalish, regarding Respondent's President, Camacho,[5] who, she asserted, was failing to perform his job duties and was "using his office for personal gain," and regarding the manner in which executive board meetings were conducted. Also, in 1988, Pollack, who, after being discharged by Tiffany Cleaners, was able to find employment with Sierra Dry Cleaners, a nonunion company, was nominated and ran for president of Respondent against Camacho.[6] The election was held on September 12, and Pollack, who received only 25 percent of the vote, was defeated by Camacho. Seventeen days later, Camacho wrote to Respondent's secretary/treasurer, Mary Caldwell, protesting the election and listing six supporting reasons, and, on December 6, less than a month after the settlement of the above unfair labor practice allegations, Caldwell wrote to Pollack, stating that Respondent "found no valid reason whatsoever for a recount of the votes, because your accusations were totally unfounded and invalid." In January 1989, Pollack wrote to the Department of Labor (DOL), challenging Respondent's election procedure and specifically its conduct of the presidential election between Camacho and herself; however, after an investigation, on April 4 of that year, the area administrator of the DOL determined that legal action was not warranted in the matter. On June 5, 1989, Pollack wrote a letter to Caldwell, protesting that Camacho and Caldwell had given themselves salary increases, during 1986, 1987, and 1988, totaling over $15,000 and proposing an amendment to Respondent's bylaws regarding the method of setting the president's and the secretary/treasurer's annual salaries, and, on July 31, the members of Respondent's executive board jointly wrote to Pollack, denying her proposed bylaws amendment. In June 1989, Pollack was hired by Mission Linen, which has a collective-bargaining relationship with Respondent; and, during cross-examination, she admitted that, notwithstanding her dissident activities, Caldwell referred her to this job. Further, in July 1990, Camacho appointed Pollack to be Respondent's shop steward at Mission Linen.

In March 1991, inasmuch as Camacho resigned as president of Respondent and as it was, according to Pollack, "almost bankrupt," Respondent was placed into trusteeship by Scalish, and he appointed Anthony Griese to the position of special trustee and Respondent's chief operating officer. On assuming office, according to Mary Caldwell and Robert Camacho, Griese rescinded Respondent's constitution and bylaws and established the International's constitution and bylaws as Respondent's governing document. Further, according to the two witnesses, Griese instituted several internal changes, including eliminating Respondent's hiring hall procedures. Also, he ceased Respondent's practice of accepting members' dues payments at Respondent's office and implemented a practice of immediately offering a withdrawal card to any member, who has been terminated or laid off from or who has voluntarily quit his job with an employer, which has a collective-bargaining relationship with Respondent.[7] Four months after assuming office, in August 1991, Griese appointed Pollack to serve on Respondent's negotiating committee during negotiations with Mission Linen,[8] and, a year later during the summer of 1992, after Pollack received two warning notices from Mission Linen and, as a result, filed grievances and unfair labor practice charges against it as "I felt like I was being reprimanded because I was union steward" and after the Regional Director of Region 28 decided to defer to Respondent's and Mission Linen's contractual grievance and arbitration procedure, Re-

[4] Upon her termination, according to Pollack, she was offered a withdrawal card by Robert Camacho, Respondent's president "so I wouldn't have to pay my union dues" while unemployed. Camacho testified but failed to deny Pollack's testimony.

[5] Apparently, the office of president of Respondent is a paid, full-time position.

[6] During the campaign, Camacho wrote to Scalish, questioning Pollack's eligibility to run against him as she was working for a nonunion shop at the time, and Pollack wrote to the Department of Labor, expressing concerns about Respondent's election process.

[7] The record establishes that the benefits to the cardholder of the withdrawal card are that he is not obligated to pay his membership dues and that, upon resuming to work in laundry and clothes cleaning industry and reapplying for membership in Respondent, he will not be required to pay an initiation fee. However, by accepting a withdrawal card, the cardholder loses his status as a member and the attendant rights to attend membership meetings, vote, and run for office.

The record establishes that Respondent distributes withdrawal cards to members, who are about to be laid off or who are laid off. Thus, according to Teresa Foote, the Dunes Hotel closed in early 1993, and, in or about November or December 1992, prior to the layoff of its employees, including those, such as Foote, who were members of Respondent, Griese visited the hotel and advised members to obtain withdrawal cards from Respondent so that they would not have to pay an initiation fee if they return to work in the "industry."

[8] During redirect examination, Pollack asserted that her appointment was "automatic" given her status as a steward; however, during further cross-examination, she conceded that nothing in the International's constitution or bylaws mandated her appointment and that it was just her "assumption" she was automatically a member of the contract negotiating committee.

spondent processed both grievances through an expensive arbitration.[9]

Thereafter, during the fall of 1992, while she was off work due to a back injury,[10] Pollack resumed her dissident activities against Respondent's leadership. Thus, Pollack testified that, after reviewing Respondent's 1991 LM-2 form, which had been filed with the DOL, on September 30, she telephoned Frank Scalish, whose office is in Cleveland, Ohio, and "I complained to him about the purchase of an automobile and . . . about the large expenditure on remodeling the Union Hall."[11] Then, according to the Charging Party, on October 7,[12] during a regularly scheduled membership meeting at Respondent's hall, with Griese standing no more than 3 feet away, she spoke to three other members, showing them the LM-2 form, and voicing her concerns about Respondent's spending and its financial status.[13] The next day, October 8, Pollack wrote to the DOL, requesting an investigation of Respondent's trusteeship and, in particular, the activities of special trustee Griese, and, as a result, without divulging the name of the individual whose complaint prompted the action, the DOL commenced an investigation of her complaints. A week later, on October 15, Pollack wrote a letter to Griese, requesting an opportunity to examine all of Respondent's financial records relating to the office remodeling and the purchase of the automobile, and Respondent made the records available for Pollack's inspection on November 24 at its attorney's office. Pollack added that, 2 weeks after inspecting Respondent's financial records, on or about December 7, she attended a general membership meeting at Respondent's hall; that, prior to the meeting, Scalish had informed her that Respondent's trusteeship would end in 1993 and a DOL representative told her that an election for president would be held at the same time; that, accordingly, her intent was to "acquire a slate to run for office"; and that, at the meeting, she spoke to Luz Hall, a receptionist and interpreter for Respondent[14] and asked "if she'd be interested in running for office on that slate in 1993 and she told me she would not be interested."[15] Finally, Pollack stated that Griese was not in the room when she spoke to Hall.

Luz Hall, who was an obviously nervous witness and who is bilingual in Spanish and English, was employed by Respondent as a receptionist in its office from June 3, 1991, until being laid off in approximately January 1992. Thereafter, Hall continued to work for Respondent but on a sporadic "on call" basis, whereby Respondent utilized her as an interpreter at its membership meetings and during visits to plants by its officers and agents. At some point, in late December 1992 or early January 1993, Hall testified she was rehired by Respondent on a full-time basis, as a "special projects coordinator" and, in the position, was responsible for interpreting, visiting plants at which Respondent was the collective-bargaining representative of the employees for the purpose of recruiting members.[16] During cross-examination, averring that she was "very stressed out," Hall said she could not recall exactly when she was rehired by Respondent but stated "it was a little before Christmas."[17] However, she was then impeached by various documents, including an unemployment compensation form and a charge, alleging sexual harassment, filed against Respondent with the State of Nevada Equal Employment Opportunities Commission, signed under penalty of perjury, in which she set forth her rehire date by Respondent as January 1 and 3, 1993. During redirect examination, Hall attempted to explain away any discrepancy as to her hire date, stating that such resulted from a pre-Christmas agreement, between Griese and herself, pursuant to which Griese would permit her to work under an assumed name at a salary less than what she would earn as special projects coordinator in order to permit her to fraudulently receive welfare payments during December. Her date of hire as special projects coordinator assumed significance here as Hall explained that, as a condition to being hired in the position, probably "one week before [Pollack] got fired" by Mission Linen, Griese spoke to her about the Charging Party[18] and said "he wanted me to start something with the employees at Mission Linen to get Suzanne removed for being a steward." Dur-

[9] Pollack testified that these were the only grievances, which the Union had processed through arbitration since 1986. She added that, in August, after a 2-day arbitration hearing, the arbitrator ruled against her, upholding Mission Linen's position on each grievance.

[10] Pollack was off work on worker's compensation leave from July 29 through October 16, 1992.

[11] According to Pollack, inasmuch as the contractual dues-check off procedure could not be utilized while she was on a medical leave of absence and notwithstanding Griese's stated policy against such payments, in September and October, she tendered her monthly membership dues directly to Respondent and such were accepted. Mary Caldwell conceded that Pollack's dues tenders had been accepted by Respondent "because she was still working at the time. She was just off on leave."

[12] During direct examination, Pollack stated that this membership meeting occurred on December 7; during cross-examination, she said she desired to correct her testimony and placed the meeting in October—presumably on the same date.

[13] Pollack stated that she did not confront Griese at the meeting with regard to Respondent's expenditures as "I had decided I wanted to see all of the paperwork on K first before making a judgment."

[14] Pollack denied being friends with Hall and, indeed, asserted that she harbored animosity toward her as she perceived that Hall's activities at the Mission Linen plant during December 1992 were a usurpation of her own duties as shop steward.

[15] Hall initially testified that her conversation with Pollack about running for office occurred prior to latter's discharge by Mission Linen, she was impeached by a prior sworn deposition in which she stated that the conversation occurred after Pollack had been terminated.

[16] The State of Nevada is a right-to-work state.

[17] At another point, Hall dated her hire for the work of special projects coordinator as early December.

[18] According to Hall, she was well aware of who Suzanne Pollack was. Thus, she testified that "I knew . . . the first day I went into the Union" that Pollack had aspirations for union office and that "Mary Caldwell warned me about Suzanne and she told me that she got the union into trouble before, to very careful if she comes into the local, to check everywhere she goes because she tried many times to run for president of the union." Caldwell, who admittedly had "concerns" about Pollack's "dishonesty and the way she turned things around backwards" but denied that such resulted from Pollack's candidacy for union office and demand to see Respondent's financial records, conceded that she told Hall she had concerns about Pollack and "just to watch Suzanne because anything you say she turns it around." Finally, on these points, Hall testified that she heard Griese refer to Pollack as "that bitch" whenever he received writings from her.

ing cross-examination, after being informed that Pollack had been discharged on or about December 31, Hall placed this conversation "around Christmas, around New Year." Hall elaborated on this during cross-examination, testifying that Griese "wanted the union members to be the ones who got rid of [Pollack]—So, I was supposed to go to Mission Linen and start something with the employees." Thereafter, Hall boasted, in her capacity as special projects coordinator (notwithstanding being for the position, "they still gave me the title so I could go into the plants," she went to the Mission Linen plant in Las Vegas and successfully organized an employee petition based on Pollack's inability to speak Spanish and, thus, to socialize with the mostly Spanish-speaking employees. However, she later contradicted herself on this point, admitting that, during her visits to the Mission Linen plant, while meeting with groups of Spanish-speaking employees, her only question to them was "how everything was;" that an employee, who said the employees needed a Spanish-speaking steward, initiated the discussion as to removing Pollack as shop steward;[19] and that she advised that such a request be in writing. However she lost her status as shop steward, there is no dispute that, a week after being relieved of her duties as shop steward, on January 1, 1993, Pollack was fired by Mission Linen.

Hall testified that she was aware, at the time it occurred, that Pollack had been discharged by Mission Linen and that, either, "the same day [Pollack] was fired or one day before," she (Hall) overheard[20] comments by Griese, regarding Pollack, while speaking on the telephone to Ronald Robertson, Mission Linen's service manager at its Las Vegas facility. After initially saying that she could not recall whether Robertson telephoned Griese or Griese telephoned Robertson and after being asked how she knew it was Robertson to whom Griese was speaking, Hall replied that, "I answered the phone when [he] called" and that she recognized Robertson's voice. Hall further testified that she transferred the call to Griese, and "I remember his words, that he said he wanted to get rid of Suzanne because she was giving them too much trouble." Asked to restate what she recalled Griese saying, Hall embellished her testimony, quoting Griese as saying, "Ron I want you to get rid of the bitch, she's giving me a lot of problems." Continuing, Hall stated that either that same day or the following day, she again answered the phone, and Robertson asked to speak to Griese. She transferred the call to Griese's desk and, upon ending the conversation, the latter "was very happy, very excited and he was very loud, loud enough that Caldwell entered the room—Griese saw her, and said, "Done deal, she's out." and "she was escorted out by [Robertson]." Griese did not testify and, thus, failed to deny Hall's testimony, and Caldwell, who did testify, failed to controvert Hall's account.

With regard to Griese's alleged comments during the first telephone conversation and after the second, Hall's credibility is, of course, of paramount concern. Thus, during cross-examination, after being informed that Pollack had been discharged on December 31, 1992, Hall stated that she heard Griese's comments to Robertson around Christmas or New Years; however, after admitting that her memory had been better during the taking of a pretrial affidavit by a Board agent on November 30, 1993, she was impeached as to the timing of the alleged conversations, having stated, in the affidavit, that the conversation occurred on February 1, 1993. Cognizant of this discrepancy, Hall volunteered that the date was "around" Christmas. Under further cross-examination, Hall reiterated that both telephone conversations occurred when Robertson telephoned Griese and that she initially answered the phone on both occasions. However, she was then confronted with her sworn testimony at a deposition taken on February 4, 1995, wherein she stated that Griese made the initial telephone call to Robertson. After listening to what she had earlier stated, Hall said such was incorrect. Finally, and of the utmost significance to Hall's credibility, she apparently told Pollack a completely different version of the Griese-Robertson conversation than related in her testimony. Thus, according to the Charging Party during cross-examination, in May 1995, she had a chance encounter with Hall at a restaurant in the Gold Coast Casino. She was there to celebrate a friend's birthday and met Hall while waiting in line to enter the restaurant. Pollack was certain that, during their ensuing conversation, her discharge from Mission Linen was discussed. Thus, according to Pollack, Hall apologized for not having come forward at the time Pollack had been terminated from Mission Linen and said that "not until the same thing happened to her did she realize how much she had hurt me." Turning to what allegedly occurred in December 1992, "I think she said . . . that she and Mr. Griese went to Mission Linen" and "that Mr. Griese asked Mr. Robertson if he could have me terminated from Mission Linen." Hall added that Robertson left the room, came back a while later, and said, "it's a done deal" and that Hall told her the conversation occurred "the day after the union meeting, that would have been Tuesday, December the 8th." Then, asked by counsel for Respondent, whether what Hall told her that Griese asked Robertson if he removed Pollack as shop steward, would Mission Linen then terminate her, Pollack answered, "yes."[21] While denying that there was any discussion of Pollack's termination from Mission Linen, Hall confirmed her meeting with the Charging Party at the Gold Coast in 1994 but remembered as being little more than "Hi, bye, how are you, where are you working."

Two other matters bear upon Halls credibility. Initially, I note that Hall was laid off by Respondent in May 1993, and

[19] With regard to the removal of Pollack as union steward, the record establishes that, based on an employee petition, on December 21, Respondent's attorney wrote to Pollack that she was being removed as the Mission Linen shop steward because "you lack the ability to effectively represent the bargaining unit employees at [Mission Linen]." Two days later, a notice, informing the employees of Pollack's removal as shop steward, was posted at Mission Linen.

[20] Hall initially testified that Griese was at his desk and she was at her desk during the conversation. Then, she clarified this, saying that her desk was located in a "temporary office," which previously had been used as a closet, that her desk was behind and to the right of Griese's desk, and that she could see Griese through the door frame (the door had been removed). In any event, Hall "could hear him, he was very loud and I could see him at all times."

[21] Pollack recalled that the conversation could have lasted from 5 to 15 minutes.

after being hired by Mission Linen, was discharged by it the following December. Thereupon, Hall filed unfair labor practice charges against Respondent and Mission Linen and while providing a Board agent with supporting evidence, divulged what assertedly happened to Pollack in December 1992. As to this, while admitting attempting to strengthen her own position, Hall disavowed any knowledge of Pollack's unfair labor practice allegations at that time; stated that what she said, regarding Pollack, was just a coincidence; and maintained that she volunteered the information "without knowing that [the Board agent assigned to her case] was the [same Board agent] that Pollack previously had." Finally, prior to the commencement of the hearing, Hall's above-mentioned sexual harassment suit against Respondent had been dismissed, and the presiding judge had assessed court costs, including lawyer's fees, against her. At the time of the hearing, Respondent was engaged in on-going efforts to collect the court costs, to which it was entitled.

Shortly after her discharge from Mission Linen, on January 4, 1993, Pollack filed the original unfair labor practice charge in Case 28–CB–3832 and a companion unfair labor practice charge against Mission Linen; however, after the Board completed its investigation of both unfair labor practice charges,[22] with the approval of the Regional Director of Region 28, she withdrew both charges.[23] On the day before she did so, February 1, Pollack telephoned Mary Caldwell at Respondent's office and asked her to inform Griese that "I was withdrawing the charges that I had filed against Mission Linen and against the Union." Later that afternoon, according to Pollack, she went to the Union's office and "tried" to pay her February membership dues to Caldwell. Pollack tendered a check to Caldwell, who asked Pollack if she was then working in a "signatory" shop; Pollack responded that she was "unemployed" at the time. Caldwell replied, "unless I am working in a signatory shop, she cannot accept my Union dues. She said she would not accept my Union dues."[24] Caldwell corroborated Pollack with regard to her tender of dues on that date; however, as to what was said, Caldwell recalled that "[Pollack] came in that morning and she wanted to pay her dues. And I told her I couldn't accept her dues and she could take a withdrawal card." Caldwell specifically denied mentioning the necessity for employment by a signatory contractor but testified that such was a requirement for membership, and Pollack specifically denied having been offered a withdrawal card by Caldwell.[25] Pollack further testified that, not having been discouraged by the rejection of her dues tender earlier in the day, she went to Respondent's regularly scheduled membership meeting that night and again tendered her membership dues on this occasion to Griese. According to Pollack, prior to the start of the meeting, she approached Griese and tendered her dues check to him. Griese responded that, unless she was then working in a "signatory establishment," he would be unable to accept her dues payment but that he would be happy to do so when she obtained work in a "union shop." Griese did not appear as a witness and, thus, failed to deny Pollack's testimony. That night, Pollack mailed her dues check to Respondent's office; 3 days later, it was returned by Respondent's attorney, who wrote, "I am sorry that the Union cannot accept your check for union dues at this time since you are not currently employed in a facility represented by the Union."

During cross-examinations, asked why Respondent would not accept her tender to union dues in February 1993, Pollack responded, "I was going to run against him for office." Asked when she told this to Griese, Pollack, who was uncontroverted on this point, replied, "He always knew I wanted to run for office." The General Counsel alleges that the effect of Respondent's refusal to accept Pollack's tender of her monthly membership dues was that she would thereafter be ineligible to hold office in Respondent. Indeed, Article XVIII, Section 5, of the International constitution provides that, in order to be eligible to hold office, a member must be actively employed in work within jurisdiction of the International and Article XVII, Section 5, provides that no member shall be eligible to hold office unless he or she has been a member in good standing for 24 consecutive months. However, Section H of the International Union constitution's trusteeship provision deems Article XVII, Section 5, inapplicable to the election of officers in local unions, which are emerging from trusteeship. Accordingly, as she

[22] In a statement of position, dated January 21, Respondent's attorney, Kist, wrote, "As to the allegation that the Union somehow participated in, or caused [Pollack's] termination, the Union had absolutely no activity or input in the Employer's decision to terminate Pollack."

[23] In January 1994, shortly after Luz Hall related her version of Respondent's successful effort to have Mission Linen discharge Pollack, Region 28 gave Pollack the opportunity to amend her previously withdrawn unfair labor practice charges against Respondent and Mission Linen. Unaware of the nature of the evidence and the witness who provided it, Pollack, of course, did so.

[24] At the time, the governing document, for Respondent was its International's constitution and bylaws. Art. I, Sec. 3 of the document states that the International has jurisdiction over all employees "employed in Laundries, Cleaning and Dyeing establishments, Towel, Linen or industrial Laundry Supply companies." Art. XV111, Sec. 1, states, in order to be admitted to membership in Respondent, a candidate "must be actively employed in work coming within the jurisdiction of . . . the International Union." Further, Sec. 5 of the same article states that "A member to be eligible to hold office in or attend meetings of a Local Union or have a vote in International or Local Union affairs must be actively employed in the work coming within the jurisdiction of the International Union." There is nonspecific language regarding retention of membership.

In a statement of position dated February 19, 1993, counsel for Respondent asserted that the International's constitution, as interpreted by the International's president and general counsel, "requires a person to be employed by a signatory employer in order to be eligible for memberships." However, other than the above-quoted provisions of the constitution, there is no record evidence to substantiate counsel's assertion. Moreover, I note that, in 1988, despite the fact that, after her layoff from Tiffany Cleaners, Pollack was hired by Sierra Dry Cleaners, a nonunion dry-cleaning establishment, Respondent accepted her membership dues payments, that she was allowed to run for president against Camacho and that, in challenging her right to run for office, Camacho questioned only Pollack's eligibility to run for office and not her right to be a member. Finally, while Pollack testified that the International Union's new constitution and bylaws, which contains a provision requiring employment by a signatory employer in order to be eligible for membership, became effective later in 1993, there is no contention that such was in effect on or about February 1.

[25] Pollack did state that had a withdrawal card been offered to her she would not have taken it.

recognized, in order to be eligible to run for office in 1993, it was only necessary that Pollack find a job in the laundry and dry-cleaning service industry in Las Vegas. Finally, asked what she did to make Griese angry enough at her to risk backpay liability by requesting her termination by Mission Linen, the Charging Party replied, "Paying me for backpay is nothing compared to if he had to pay back that $50,000 . . . to the Union if I had sued, claiming that he was irresponsible with union funds."

Besides Pollack and Hall, in support of its complaint allegations in Case 28–CA–3855, the General Counsel offered the testimony of Teresa Foote in order to establish disparate treatment with regard to Pollack. Thus, according to Foote, she was laid off as a result of the closing of the Dunes Hotel in early 1993, and was given a withdrawal card by Camacho or Caldwell in February or March. Foote added that she has not paid any membership dues since her layoff and conceded that there is no obligation to make such payments while on withdrawal status. Foote testified that in September 1993 she was given General Counsel's Exhibit 6, a document entitled, "Union Status Verification, by the State of Nevada Employment Security Department" and instructed to have it completed by an official of Respondent. Thereupon, she visited Respondent's office, and Robert Camacho completed the document for her and signed it. Analysis of it discloses that Camacho indicated in the appropriate spaces that Foote was registered for work with Respondent and that she was meeting all "reporting requirements." However, there is no dispute that, within hours, Camacho telephoned Foote and requested that she return the document to him inasmuch as he "wasn't supposed to fill it out" because Respondent "wasn't a job finding place." In this regard, Camacho conceded that he was told to retrieve the document from Foote inasmuch as Respondent was no longer operating a hiring hall.

B. Legal Analysis

1. Case 28–CB–3832

The General Counsel contends that Respondent sought to have Mission Linen discharge Suzanne Pollack because of her dissident activities and because she desired to challenge the incumbent leadership of Respondent in an internal presidential election in 1993 in violation of Section 8(b)(2) of the Act and Section 8(b)(1)(A) of the Act. While denying the above-described substantive allegations, Respondent affirmately argues that the instant complaint was procedurally defective as the underlying amended charge was time-barred pursuant to Section 10(b) of the Act—the 6-month statute of limitations. Contrary to Respondent, the General Counsel argues that, as Respondent engaged in fraudulent concealment of certain material facts, the Act's statute of limitations has been tolled here. However, notwithstanding each party's cogent arguments, I need not engage in discussion and analysis of the applicability of Section 10(b) to the instant fact matrix or of the General Counsel's fraudulent concealment contention, for assuming, without deciding, that the Act's statute of limitations has been tolled by Respondent's conduct, in contending the latter engaged in the above-described alleged unfair labor practices and, indeed, based upon its attorney's above-quoted statement, in his January 21, 1993 position statement to the Board, Respondent engaged in fraudulent concealment of material facts herein, counsel for the General Counsel relies on the testimony of one witness, Luz Hall, and no corroborative evidence. Therefore, as the parties recognized, her credibility is of critical import herein. As to this, while recognizing that her testimony was wholly uncontroverted by Anthony Griese, who did not testify, I, nevertheless, believe that the General Counsel's reliance on the truth of her assertions is woefully misplaced.

Bluntly put, I found Hall's testimonial demeanor to be that of an inherently incredible witness, one who, I believe, exhibited unmistakable bias against Respondent,[26] who had previously acted engaged in an employment scheme with Respondent in order to fraudulently collect welfare payments during December 1992, and who, I also believe, compelled to testify by subpoena and fearful of a charge of perjury, perpetuated false testimony to the Board.[27] This latter factor, I believe, rather than any other, accounted for her admitted and conspicuous nervousness while testifying. My conclusion as to Hall's lack of credibility is buttressed by her impeachment on key aspects of her account of Griese's alleged initial telephone conversation with Ron Robertson (in a pretrial affidavit, she gave the date of the conversation as February 1, and in an earlier sworn deposition, she said that Griese had telephoned Robertson) and most significantly, by the contradictory account of Griese's acts, which she related to Pollack during their chance encounter at the Gold Coast Casino in May 1994. Thus, Pollack, who, as such was contrary to her own pecuniary interests, had no reason to be untruthful regarding what Hall told her, admitted that Hall told her that Griese's conversation with Robertson occurred at the Mission Linen facility in early December 1992 and that the conversation related to removing Pollack as shop steward and, in return, her discharge.[28] In the foregoing circumstances, as I find that Hall's testimony was utterly untrustworthy and unreliable and as such was the only basis for the General Counsel's unfair labor practice and fraudulent concealment allegations, I shall recommend dismissal of the complaint in Case 28–CB–3832.

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[26] Not only had Hall filed unfair labor practice charges against Respondent regarding her discharge from Mission Linen, but also she had filed a complaint against Respondent alleging sexual harassment. The latter had been dismissed by a judge, who had assessed litigation costs against Hall, and, at the time of the hearing, Respondent was attempting to collect what she owed.

[27] I found Hall's comment that it was just a "coincidence" she volunteered the information regarding Griese's asserted effort to have Mission Linen terminate Pollack, and her professed lack of knowledge of the latter's prior unfair labor practice charges wholly unbelievable. To the contrary, in her job as special projects coordinator and given her office proximity to Griese, she was in a position to have known of Pollack's allegations. Moreover, she did not strike me as a naive individual, and I think she believed that, by falsely implicating Griese in Pollack's discharge, her chances, that the Board would find merit to her own unfair labor practice charges, would be enhanced.

[28] Hall's denial that she and Pollack discussed the former's discharge was, of course, a fabrication.

2. Case 28–CB–3855

The General Counsel alleges that Respondent engaged in conduct violative of Section 8(b)(1)(A) of the Act on February 1, 1993, by refusing to accept Suzanne Pollack's tender of her monthly membership dues, thereby removing her status as a member in good standing, rendering her ineligible to run for union office, and coercing employees in the exercise of their right to run for union office. Respondent conceded that it refused to accept Pollack's tender of dues but contends that, in doing so, it was merely enforcing a membership rule and, therefore, acting within the proviso to Section 8(b)(1)(A). Contrary to Respondent, counsel for the General Counsel argues that, rather than Respondent's membership rule, what is at issue here is its motivation for acting against Pollack. At the outset, in this regard, while she was obnoxiously sarcastic, egotistical, obstreperous, opinionated, and feisty, Pollack did not appear to be an incredible witness. To the contrary, she impressed me as being entirely candid, particularly when, obviously aware of the consequences, she testified regarding what was said by Hall during their encounter at the Gold Coast Casino. Further, noting that her account of her conversation with Griese on February 1 was uncontroverted and that her testimony was corroborated by Respondent's attorney's letter, which accompanied her rejected dues tender, I credit her account of her conversation with Mary Caldwell on February 1 over that of the latter, who was a far less impressive witness. Accordingly, I find that, on that date Pollack was not working at any job in the Las Vegas, Nevada, dry-cleaning and laundry industry and was unemployed; that Caldwell, Griese, and Respondent's attorney rejected Pollack's tenders of her monthly membership dues because, at the time, she did not have a job with a union signatory dry-cleaning or laundry employer, that, at no point during their respective conversations with Pollack, did Griese or Caldwell offer Pollack a withdrawal card; and that, in his letter to Pollack rejecting her dues tender, Respondent's attorney repeated Respondent's above-stated rationale for doing so. Moreover, while I rely on Mary Caldwell's admissions that she had concerns about Pollack's dishonesty and penchant for turning "things around backward" and that she expressed these misgivings to Luz Hall, I found disingenuous her denial that her mistrust of Pollack resulted from the latter's dissident activities and believe that Pollack's acts, in fact, form the basis for Caldwell's and, indeed, Griese's attitude toward the Charging Party.

Counsel for the General Counsel argues that Respondent refused to accept Pollack's tender of her membership dues in an attempt to prevent her from holding union office due to her intraunion political activity. In this regard, the record is uncontroverted, and I find, that, since 1988 and continuing through the fall of 1992, Pollack had been an internal union dissident against Respondent's incumbent leadership with her acts, in this regard, including running for president, challenging the conduct of the election before the DOL, complaining to the International regarding improprieties at the local union, petitioning Respondent to amend its internal bylaws to prohibit officers from increasing their salaries, investigating what she considered to be improper expenditures by Griese, and seeking a DOL investigation of the conduct of Respondent's trusteeship. While there is record evidence that, notwithstanding her dissident activities, Respondent appointed Pollack to the position of shop steward at Mission Linen and to its bargaining committee for the 1992 contract negotiations with her employer and, in the summer of 1992, processed two of her grievances through a costly arbitration hearing and while asserted evidence of Respondent's animus toward Pollack has been discredited by me, I, nevertheless, believe that significant evidence of Respondent's animus toward Pollack, based on her dissident activities, exists. Thus, Mary Caldwell conceded that she viewed Pollack as a dishonest individual, one who had a penchant for turning "things around backward," and I believe the former attitude was directly related to Pollack's dissident activities. Moreover, inasmuch as I believe that no such internal union rule existed, I find that Respondent's agents dissembled when they rejected Pollack's dues tender ostensibly because she was no longer employed by a signatory employer. As to this, close scrutiny of Article XVIII of the International's constitution and bylaws, which was Respondent's governing document on February 1, 1993, establishes that, while the article contains provisions for admission to and qualifications for membership and eligibility for holding office and voting, there exists no provision, setting forth qualifications or rules for retention of membership or defining the consequences of losing a job in the industry. Further, assuming that one is able to infer such a provision from the wording of Article XVIII, that language does not permit the inference that an individual must remain working for a union-signatory employer in order to retain his or her membership status. Thus, the only language on this point, which language is reiterated throughout the article, is that an individual "must be actively employed in the work coming within the jurisdiction of the International Union" in order to become a member or to run for office or vote in internal union elections. While counsel for Respondent asserted, during the investigation of this matter and in its posthearing brief, that the language of Article XVIII is interpreted as requiring employment by a signatory contractor, there is no record evidence of such an interpretation, and, as the record evidence is uncontroverted that, in 1988, Respondent accepted membership dues from Pollack and permitted her to run for office notwithstanding her employment by a nonunion dry-cleaning company, such evidence would be of highly dubious value. In these circumstances, as Respondent's rationale for rejecting Pollack's dues tender seems to have been a sham, the inference may be drawn that Respondent was motivated by Pollack's dissident political activity and her announced intention to run for president in a possible 1993 election. *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966); *Teamsters Local 287 (Emery Air)*, 304 NLRB 119, 123 (1991).[29] Based on the foregoing, I find that there is substantial record evidence to warrant a conclusion that Respondent unlawfully refused to accept Pollack's dues tender because of her internal political activities. *Teamsters Local 287,* supra; *Machinists District 91 (Pratt & Whitney)*, 278 NLRB 39 (1986).

[29] In this regard, I credit Pollack that she had been informed of a likely 1993 presidential election by the DOL and by International President Scalish and that she had made her interest in running for the position known to Griese.

Respondent's defense is two-fold. Counsel for Respondent argues that there is no evidence of discriminatory treatment herein and specifically states, "the Union has treated Pollack in exactly the same fashion as it has all other members." Contrary to counsel, there is no record evidence that Respondent has, in fact, enforced the identical condition for retaining membership on any other individual and there is uncontroverted record evidence that, in 1993, Respondent treated Pollack in a different manner than it had in 1988 when it accepted Pollack's union dues while she was unemployed and after she became employed by a nonunion company. Furthermore, I have found that Pollack was not offered a withdrawal card by Caldwell or Griese and, while members who have been laid off by signatory employers have been offered withdrawal cards by Respondent, given the dearth of record evidence on the subject, such simply may have been reflective of a desire to relieve the members from the expense of membership dues while unemployed rather than of a loss of membership status due to their layoffs. In this regard, I rely on Pollack's uncontroverted testimony that, in 1988, Camacho offered her a withdrawal card to relieve her of her dues obligation and note that, as set forth above, there is no retention of membership provision in the International constitution or any provision, mandating loss of membership while unemployed.

As the other facet of its defense, Respondent contends that it was merely enforcing a membership rule against Pollack. In this regard, Section 8(b)(1)(A) of the Act provides that it shall be an unfair labor practice for a labor organization "to restrain or coerce . . . employees in the exercise of the rights guaranteed in Section 7 of the Act." The proviso to Section 8(b)(1)(A) states that the foregoing provision "shall not impair the right of a labor organization to proscribe its own rules with respect to the acquisition or retention of membership therein." Assuming that Respondent was enforcing an extant membership rule, a conclusion which I do not accept, the legality of its allegedly unlawful conduct depends on whether refusing Pollack's tender of her monthly membership dues was privileged under the language of the aforementioned proviso, and, ran analyzing the interplay between Section 8(b)(1)(A) and its proviso,"[30] it is necessary to understand the dictates of *Scofield v. NLRB*, 394 U.S. 423 (1969). Therein, in analyzing the same section of the Act, the Supreme Court stated that, under its analytical approach which differentiates between internal and external enforcement of union rules, a labor organization is free to enforce "a properly adopted rule," one which is "not the arbitrary fiat of a union officer" provided that the rule "reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule." Id. at 428–430. At the outset, inasmuch as it has no basis in the International constitution and bylaws and was contrary to Respondent's past practice, the policy, which was stated to Pollack, by Mary Caldwell, Anthony Griese, and Respondent's attorney, seems to have been more akin to an "arbitrary fiat" than to a duly adopted union rule. Moreover, I have found that Respondent acted against Pollack in retaliation for her dissident activities, and, in *Teamsters Local 579 (Janesville Auto Transport),* 310 NLRB 975 (1993), the Board noted that internal union sanctions, such as removing an individual from membership status:

> [I]mposed in retaliation for a member's exercise of the right to engage in intraunion activities in opposition to the incumbent leadership of the union, violates Section 8(b)(1)(A) because it does not reflect a legitimate union interest and, instead, impairs a policy which Congress has imbedded in the labor laws . . . the right guaranteed by the Labor Management Reporting and Disclosure Act . . . to participate fully and freely in internal union affairs.

Here, under the pretense of enforcing a membership rule, Respondent sought to deprive Pollack of her right, under the Labor Management Reporting and Disclosure Act, to engage fully in the internal affairs of Respondent. Accordingly, assuming the existence of the membership rule, which is asserted by Respondent, such does not shield Respondent from a finding that, by refusing to accept Pollack's tender of membership dues and, by removing her from membership, Respondent acted in violation of Section 8(b)(1)(A) of the Act. *Teamsters Local 287*, supra; *Carpenters Local 22 (Graziano Const. Co.)*, 195 NLRB 1 (1972).

CONCLUSIONS OF LAW

1. Mission Linen is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent engaged in conduct violative of Section 8(b)(1)(A) of the Act by failing and refusing to accept Suzanne Pollack's tender of membership dues on February 1, 1993, thereby removing her from the status of a member of Respondent and causing her to be ineligible to run for union office.
4. Respondent's above described acts and conduct constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
5. Unless specified above, Respondent engaged in no other unfair labor practices.

REMEDY

Having found that Respondent engaged in unfair labor practices violative of Section 8(b)(1)(A) of the Act, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action necessary to effectuate the purposes and policies of the Act. I shall recommend that Respondent be ordered to accept Pollack's payment of membership dues and reinstate her to full membership status, retroactive to February 1, 1993.

[Recommended Order omitted from publication.]

[30] *Teamsters Local 741 (A.B.F. Freight*), 314 NLRB 1107, 1108 (1994).